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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Competitive Telecommunications Association,)
Florida Competitive Carriers Association, and)
Southeastern Competitive Carriers Association)
Petition on Defining Certain Incumbent LEC Affiliates)
As Successors, Assigns or Comparable Carriers Under)
Section 251(h) of the Communications Act)

CC Docket No. 98-39

REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications, Inc. ("Intermedia"), by its attorneys and pursuant to the Commission's Public Notice, CC Dkt. 98-39, DA 98-627, released April 1, 1998, and the Commission's Order Extending Time to File Reply Comments, CC Dkt. 98-39, DA 98-867, released May 8, 1998, hereby submits its reply comments in the above-captioned proceeding.

Intermedia files this reply to respond to the claims of the ILECs that they simply cannot use their affiliates to avoid their Sec. 251(c) obligations because such action would be unlawful.^{1/} While the ILECs are right that it is unlawful to use their affiliates to avoid the requirements of Section 251(c), the comments filed by competing carriers are rife with examples of ILECs doing just this.

^{1/} See Comments of GTE Service Corp. at 19, Comments of BellSouth Corp. at 8-14.

I. ILECS ARE TRANSFERRING CUSTOMERS AND CONTRACT SERVICE ARRANGEMENTS TO THEIR AFFILIATES

ILECs have attempted to avoid their resale obligations under Sec. 251(c) by claiming that long term contract service arrangements ("CSAs") are not subject to statutory resale requirements or by moving CSAs to their CLEC affiliates. As noted by CompTel *et al.* in their petition, BellSouth transferred certain customers to CSAs and then tried to claim that CSAs were not subject to resale. Because the Commission has ruled that the resale requirement is applicable to CSAs, BellSouth now appears to be migrating customers and CSAs to its "CLEC" affiliate, BellSouth BSE.^{2/} In another permutation of an effort to avoid Section 251(c)'s requirements, Southern New England Telephone Company ("SNET") transferred all of its retail operations to its affiliate SNET America Inc. ("SAI"). In an effort to deal with the anticompetitive consequences of this action, the Connecticut Department of Public Utility Control ("DPUC") has announced plans to hold a statewide ballot allowing Connecticut residents to choose their local service provider.^{3/} By the time such a ballot is conducted, however, most SNET customers will be firmly ensconced on the SAI network.

Ameritech asserts that ILECs cannot transfer customers and their CSAs from the ILEC to the affiliate without violating the Commission's anti-slamming rules.^{4/} This argument elevates form over substance, however. Any number of techniques can be used by an ILEC to obtain a

^{2/} Petition of Competitive Telecommunications Ass'n *et al.*, for a Declaratory Ruling, or in the Alternative, for Rulemaking on Defining Certain Incumbent LEC Affiliates as Successors, Assigns or Comparable Carriers under Section 251(h) of the Communications Act, at 7 ("Petition of CompTel *et al.*").

^{3/} See DPUC Investigation of the Southern New England Tel. Co. Affiliate Matters Associated with the Implementation of Pub. Act 94-83, Decision, Docket No. 94-10-05 (Ct. DPUC June 25, 1997).

^{4/} Comments of Ameritech Corp. at 17.

customer's "consent" to transfer its CSA to the ILEC affiliate. For example, an ILEC can offer service incentives for the customer to agree to "move" to the ILEC affiliate, while the ILEC forecloses the customer's option to move to another competitor by agreeing to waive the high termination of service penalties traditionally contained in a CSA if, and only if, the customer "moves" to the ILEC's affiliate. In addition, until an ILEC's Operational Support System ("OSS") is fully accessible by competitors, only the ILEC affiliate has the means to provide adequate service to the public.

Frontier Corporation ("Frontier") argues that the transfer by ILECs of CSAs to their affiliates does not warrant heightened scrutiny because the "underlying piece-parts of any particular CSA are available for resale at wholesale rates to all providers -- affiliated and unaffiliated alike."^{5/} For CLECs, however, the issue is not just about getting the same access as the ILEC affiliate to facilities and services, but also the same access as the ILEC affiliate to customers. If the ILEC is allowed to hand over customers and CSAs to the affiliate, the affiliate will have a unfair competitive headstart -- namely, an instant, secure base of customers and long term CSAs, developed by the regulated entity at the expense of ratepayers using monopoly resources -- without expending the human and monetary resources that competing LECs incur in building their customer bases. These are savings that the unregulated ILEC affiliate can use to price its services below those of its competitors and force competitors out of the local exchange market. The Commission must treat ILEC affiliates that are the beneficiaries of such transfers as ILECs or comparable carriers subject to statutory resale obligations.^{6/}

^{5/} Comments of Frontier at 5.

^{6/} Giving customers, which the ILEC proposes to transfer to an affiliate, a choice of local service providers is not a solution. In Connecticut, implementation of a statewide ballot has not proceeded
(footnote continued on next page)

II. ILECS SHOULD NOT BE PERMITTED TO EVADE STATUTORY OBLIGATIONS BY MOVING ADVANCED SERVICES TO AFFILIATES

ILECs are attempting to avoid their statutory obligation to resell advanced telecommunications services by, *inter alia*, transferring the unbundled network elements ("UNEs") necessary to provide these services to their ILEC affiliates and refusing to sell advanced telecommunications services through the ILECs. As noted in the comments of e.spire Communications, Inc., Ameritech transferred essential local network data facilities to an affiliate and refused to provide local frame relay data interconnection until a state commission administrative law judge issued an adverse ruling.^{7/} Another example is the case of Bell Atlantic, which before its merger, refused to provide HDSL and ADSL conditioned loops to competitors, and only made these loops available after it began providing HDSL and ADSL services to its end-users.^{8/}

There are sound policy reasons to require ILECs to resell advanced telecommunications services and to subject the UNEs necessary to provide such services to the interconnection and unbundling requirements of Section 251(c), at least until the local exchange markets are competitive. If an ILEC provides advanced services only through its affiliate, which is not subject to resale requirements, other LEC resellers will only be able to provide plain old

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smoothly. The ballot has been delayed numerous times. Meanwhile, SAI, which is pursuing an entry strategy via resale only, has used SNET's provision of OSS, conveniently available only for services provided through resale, and not for services provided through UNEs, to lock up customers in advance of the ballot. Competing LECs who have pursued a facilities-based entry strategy have been placed at an extreme disadvantage. See Comments of MCI, at 12-13; Connecticut Regulators Delay Statewide Local Balloting, Telecom A.M., May 28, 1998.

^{7/} See Comments of e.spire Communications, Inc. at 6-7.

^{8/} See Testimony of Ellwood R. Kerkeslager, Vice President of Technology and Infrastructure, AT&T Corp., before the Senate Commerce, Science and Transportation Committee, Subcommittee on

(footnote continued on next page)

telephone service ("POTS"). In contrast, the ILEC affiliate can offer high speed broadband services that fulfill customers' voice and data requirements. CLEC resellers, whose participation Congress counted on, in large part, to open the local exchange markets to competition, will be shut out entirely from such markets.

In addition, facilities-based CLECs will not be able to compete with an ILEC affiliate, which has the electronics necessary to condition loops to provide advanced services and the technical and other key personnel and information about the network, all handed to it by the ILEC. ILEC affiliates also have easy access to the ILEC's network, while CLECs are fighting just to obtain access to the UNEs necessary to provide POTS.^{9/} ILEC affiliates can deploy advanced communications services at incremental cost, lock up customers, and cement their control over the local exchange market long before CLECs begin deploying their advanced communications networks. Congress plainly did not intend that CLECs should be required to build their own duplicate advanced networks to compete in the local exchange market and the Commission should take immediate action to ensure that the ILECs' most recent ploy of establishing "competitive" affiliates to avoid statutory obligations is stopped before it has the chance to do more damage.

CONCLUSION

For the foregoing reasons, the Commission should: (1) require resale of advanced telecommunications services; (2) subject to Section 251(c)'s requirements, an ILEC affiliate that

(footnote continued from previous page)
Communications, April 22, 1998.

^{9/} ILECs use a variety of tactics to delay providing CLECs interconnection even to POTs. For instance, ILECs often impose inefficient collocation requirements on CLECs seeking to combine unbundled network elements.

is the sole provider of advanced telecommunications services or to which the ILEC transfers
UNEs necessary to provide advanced telecommunications services; and (3) treat an ILEC
affiliate to which the ILEC transfers CSAs as an ILEC or comparable carrier, subject to
Section 251(c)'s resale requirements.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS INC.

A handwritten signature in dark ink, appearing to read "Sara Seidman", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 1st day of June, 1998, served a copy of the foregoing by hand delivery to the following:

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